IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

C.R. No.5768 of 2007(O&M)
Date of Decision : 6.11.2007

Punjab State Civil Supplies Corp. Ltd. (PUNSUP) & Anr.

.....Petitioners

Versus

M/s Singla Foods Pvt. Ltd. & Ors.

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Ms. J.K. Gurna, advocate
for the petitioners.

VINOD K. SHARMA, J. (ORAL)

Present revision petition has been filed against the order dated 20.8.2007 passed by the learned Addl. Civil Judge (Sr. Divn.), Nabha vide which application moved by the petitioners under Order 38 Rule 5 C.P.C. for attachment of the property of the defendant respondents, has been ordered to be dismissed.

The petitioners filed an application by claiming that defendant respondents have disposed of all their properties except one which is under mortgage with the Punjab Financial Corporation. It is also the case of the petitioners that a notice has been issued by the Punjab Financial Corporation in the newspapers for the sale of the property of the defendant respondents and, thus, they are entitled to seek attachment of the suit property as their right to recover the amount being creditor is likely to be affected. The learned trial Court has been pleased to dismiss the said application by relying upon the judgment of this Court in the case of ***Iqbal Singh Vs. Punjab Pesticides, Patti 2002 (1) Civil Court Cases 210 (P&H)*** wherein this Court has been pleased to lay down as under :-

> "6. It has been laid down in the above-mentioned cases that passing of an order under Order 38 Rules 5 of the Code is an extraordinary remedy and before a plaintiff can succeed he has to give material particulars, source of information and grounds to prove t he allegations made in the application. The Court would not

> be justified in issuing an order for attachment before judgment, or for security, merely because it thinks that no harm would be done thereby or that the defendants would not be prejudiced. A mere allegation that the defendant was selling off his properties is not sufficient to invoke the above said provisions."

The learned counsel for the petitioners has contended that the order passed by the learned trial Court cannot be sustained as the judgment of this Court has been misapplied as in the present case the petitioner had given the details of the properties as well as source of information. The property of the debtor can only be attached to avoid mala fide transfer if the same is with an intention to defeat the right of the creditor. It can hardly be said that sale by Punjab Financial Corporation would be such an act which would entitle the petitioners to seek attachment of the property before judgment and thereby affect the rights of the Punjab Financial Corporation to recover their amount from mortgaged property.

There is no error in the order passed by the learned trial Court which may call for interference by this court in revisional jurisdiction.

Dismissed.

6.11.2007 **(VINOD K. SHARMA)**
'sp' **JUDGE**